

BURKE, WILLIAMS & SORENSEN, LLP
Richard J. Reynolds, Bar No. 89911
Rafael R. Garcia-Salgado, Bar No. 283230
1851 East First Street, Suite 1550
Santa Ana, CA 92705-4067
Telephone: 949.863.3363
Facsimile: 949.863.3350

Attorneys for Creditor
TRINITY FINANCIAL SERVICES, LLC

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

In re:

THOMAS J. CHEK,
Debtor,

Case No. 18-30006-DM

Chapter Number: 13

**SECURED CREDITOR TRINITY
FINANCIAL SERVICES, LLC'S
OBJECTION TO THIRD AMENDED
CHAPTER 13 PLAN**

TRINITY FINANCIAL SERVICES, LLC ("Trinity") hereby objects to confirmation of the Debtor's proposed Third Amended Chapter 13 Plan [Docket No. 64] (the "Plan") in the above-referenced matter. This objection is based on the authorities cited herein and on such additional submissions and argument as may be presented at or before the confirmation hearing. In support of its Objection, Trinity respectfully states as follows:

I. INTRODUCTION

Despite a flurry of recent activity in this case by the Debtor, the Debtor still fails to address the basic issues preventing confirmation of the Plan. Trinity requests that the Court deny confirmation of the Plan and dismiss this case, as it still fails to contribute all of his disposable income to the Plan for the first 3 months. As reflected in the Debtor's second amended Schedule J [Docket No. 38 at page 26], the Debtor has disposable income in the amount of \$748.76.

1 However, the Debtor is only contributing funds in the amount of \$534.27 for the first three
2 months [Docket No. 64 at page 1]. The Debtor should be required to contribute all of his
3 disposable income to the Plan, which would allow for creditors to exit from this bankruptcy much
4 more quickly. Additionally, the Debtor filed a *Declaration of a Third Party in Support of*
5 *Feasibility of the Plan* [Docket No. 65] (the “Contribution Declaration”). However, Declarant
6 Thomas Chek, Jr. merely states that he is able to provide “assistance for the life of the Plan as
7 needed.” The Declarant fails to state the quantity of funds he is contributing to the Plan, and fails
8 to provide any proof that he is able to assist with funding the Plan. For the reasons set forth
9 herein, the Court should deny confirmation of the Plan and dismiss this case.

10 **II. ARGUMENT**

11 1. The provisions of 11 U.S.C. § 1325 set forth the requirements for the Court to
12 confirm a Chapter 13 Plan. The burden is on the debtor to demonstrate that the plan meets the
13 conditions essential for confirmation. *Warren v. Fidelity & Casualty Co. of N.Y. (In re Warren)*,
14 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988). For the reasons detailed herein, the Debtor fails to meet
15 this burden.

16 **A. The Plan is Not Feasible Because It Relies on Family Contributions**

17 2. A reviewing court should confirm a plan only if it appears under all circumstances
18 that the plan has a reasonable likelihood of success. *In re Craig*, 112 B.R. 224, 225 (Bankr. N.D.
19 Ohio 1990) (citing *In re Anderson*, 28 B.R. 628, 630 (Bankr. S.D. Ohio 1982). Additionally,
20 “[t]he Debtor bears the burden of proof in establishing his ability to make the payments needed
21 under the plan, and must provide sufficient factual basis for the Court to determine both the
22 regularity and stability of his income.” *In re Porter*, 276 B.R. 32, 38 (Bankr. D. Mass. 2002).

23 3. Chapter 13 plans that require contributions from non-debtors to achieve feasibility
24 are “disfavored.” *In re Deutsch*, 529 B.R. 308, 312 (Bankr. C.D. Cal. 2015) (denying
25 confirmation of a plan relying on contributions by the debtor’s cohabiting significant other). In
26 general, to approve a plan calling for family contributions, courts require “a firm commitment by
27 the family member to make the contributions and a long and undisputed history of providing for
28 the debtor.” *In re Mercer*, No. 2:14-BK-31175-TD, 2015 WL 5735810, at *1 (Bankr. C.D. Cal.

1 Sept. 29, 2015). Courts have also observed that, “as a general proposition, gratuitous payments to
2 a debtor by his relatives do not constitute regular income.” *In re Campbell*, 38 B.R. 193, 196
3 (Bankr. E.D.N.Y. 1984). A court may permit exceptions where the contributions come from a
4 non-debtor spouse, pursuant to a contractual or legal obligation, or where there has been a history
5 of regular payments. *Id.*

6 4. In this case, none of the exceptions apply. The Debtor has not provided sufficient
7 evidence that his Chapter 13 plan is feasible. All of the Debtor’s previous schedules—including
8 the original schedules and the amended versions in March and May [Docket Nos. 30 and 38]—
9 omitted contribution income, so the Court should not accept a late-filed contribution declaration
10 that emerges once it has become clear the Debtor lacks the finances to fund his Plan. The Debtor
11 may not simply make up numbers as he goes along. *See In re Antoine*, 208 B.R. 17, 19 (Bankr.
12 E.D.N.Y. 1997) (contributions by family members do not, as a general rule, constitute regular
13 income, and confirmation has been denied to plans premised on such payments to the debtor
14 where there was no history of such payments and they were only promised on an “as needed”
15 basis).

16 5. In this case, the filed Contribution Declaration commits all of the mistakes warned
17 about in the case law. The Debtor’s relative declares only that he will assist in carrying out the
18 Plan “financially as necessary.” Contribution Declaration at ¶ 3. The relative’s commitment is
19 also limited to the plan term, and will only be provided “as needed.” *Id.* at ¶ 4. The relative bases
20 this commitment on his “well paying job,” but does not provide any specifics as to his income.
21 *Id.* at ¶ 5. The plan contributor also does not cite to any legal or contractual basis for his support
22 of the Debtor. Further, there is no evidence of the required “long and undisputed history of
23 providing for the debtor.” *In re Mercer*, 2015 WL 5735810, at *1.

24 6. Because the hoped-for “contribution” from the Debtor’s son is to cover a shortfall
25 in the Debtor’s net income that has existed all year, confirmation should be denied and the case
26 converted to Chapter 7. *See In re Porter*, 276 B.R. at 38 (“this Court, along with many others to
27 have considered this issue, will always be reluctant to confirm a Chapter 13 plan, whose
28 feasibility depends so significantly upon contributions from family members of a debtor, and

1 where no legally binding obligation currently exists”).

2 **III. CONCLUSION**

3 The Debtor is clearly unable to service his secured claims, and has languished in this
4 Court for the past eight months. Trinity submits that dismissal of this case is appropriate. If the
5 Court is not inclined to dismiss this case, Trinity respectfully requests that the Plan not be
6 confirmed as proposed.

7
8 Dated: August 13, 2018

Respectfully submitted,

9 BURKE, WILLIAMS & SORENSEN, LLP

10
11
12 By: 

13 Richard J. Reynolds
14 Rafael R. Garcia-Salgado
15 Attorneys for Creditor
16 TRINITY FINANCIAL SERVICES, LLC
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

On August 13, 2018, I caused to be served a true and correct copy of **SECURED CREDITOR TRINITY FINANCIAL SERVICES, LLC’S OBJECTION TO THIRD AMENDED CHAPTER 13 PLAN** on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope with postage fully prepaid in the United States mail at Los Angeles, California, **and/or** by NEF as addressed as follows:

- **David Burchard** **TESTECF@burchardtrustee.com,**
dburchard13@ecf.epiqsystems.com
- **Rafael Ramon Garcia-Salgado** **rgarcia@bwsllaw.com, bantle@bwsllaw.com**
- **Kelsey Luu** **ecfcanb@aldridgepите.com, kluu@ecf.inforuptcy.com**
- **Russell Marne** **russell@marne.com**
- **Office of the U.S. Trustee / SF** **USTPRegion17.SF.ECF@usdoj.gov**
- **Richard J. Reynolds** **rreynolds@bwsllaw.com, psoeffner@bwsllaw.com**

Thomas J. Chek
900 Arlene Way
Novato, CA 94947-6905

Honorable Dennis Montali
U.S. Bankruptcy Judge
Mail Box 36099
San Francisco, CA 94102

Dated: August 13, 2018


Bernadette C. Antle